

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5630 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

B J RAVAL

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MR DM THAKKAR for Petitioner
MR HL JANI for Respondent No. 1
MR PV HATHI for Respondent No. 2, 4, 5

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/12/96

ORAL JUDGEMENT

1. The name of respondent no.3 is ordered to be deleted. Heard learned counsel for the parties.

2. The petitioner, in this Special Civil Application and more so in para no.1 thereof has stated that the petition raising similar contentions, as are raised in the present petition, being Special Civil Application

No.807/83 has been admitted and interim relief has also been granted. The Special Civil Application No.807/83 has already been decided on 17th June, 1996.

3. The petitioner in this Special Civil Application prayed for the reliefs which read as under:

(A) Your LORDSHIPS be pleased to issue appropriate writ, direction or order of this Hon'ble High Court quashing and setting aside the final seniority list prepared by the respondent no.1 for the post of Additional Assistant Engineers (Mechanical) showing the position of the employees of the said cadre as on 31st December, 1982, vide order dated 21-9-1983 as being illegal, null and void in so far as is relevant to the petitioner and respondent no.2, 3, 4 and 5 and be pleased to direct the respondents to assign appropriate seniority to the petitioner in accordance with law.

(B) Your LORDSHIPS be pleased to quash and set aside the promotions issued by the respondent no.1 of employees junior to the petitioner as being illegal, null and void.

(C) Your LORDSHIPS be pleased to restrain the respondent no.1 from operating the seniority list issued by the respondent State for the post of Additional Assistant Engineers (Mechanical) dated 21-9-1983 pending the admission, hearing and final disposal of this petition.

(D) Your LORDSHIPS in the alternative be pleased to direct the respondent no.1 to keep one post of D.E. (Mechanical) vacant pending admission, hearing and final disposal of this petition.

4. From the reading of prayer (A) aforesaid made by the petitioner in this Special Civil Application, the petitioner prayed for quashing and setting aside of the final seniority list prepared by the respondent no.1 for the post of Additional Assistant Engineers (Mechanical) showing the position of the employees of the said cadre as on 31st December, 1982. This list has been stated to be prepared under the order dated 21st September, 1983. The petitioner has not filed a copy of that document on record. In the absence of such document this court is not in a position to quash and set aside that order, and as such, no relief prayed for in this Special Civil

Application can be granted to the petitioner.

5. The counsel for the petitioner has tried to make his submissions on merits challenging the validity of the seniority, but it is really shocking and surprising that in the absence of this document how this contentions are available to the petitioner. The submissions on merits sought to be made cannot be allowed as the impugned order itself has not been filed. This is a petition filed by the petitioner under Article 226 of the Constitution of India. Normally whenever an order of Government or some authority is impugned before this court under Article 226 of the Constitution of India, the copy of the order must be produced before it. In the absence of the impugned order it would not be possible for this court to know and ascertain the reasons and grounds which may have impelled the authority to pass the order. In the absence of the order under challenge this court can not quash the same. Any reference in this respect is required then reference may have to the decision of the Supreme Court in the case of Surinder Singh vs. Central Government reported in 1986 (4) SCC 667.

6. The most surprising also is the action of the registry of this court. The impugned order has not been filed along with this Special Civil Application, but the petition has been reported to have completed in all respects and it has been circulated. The way in which the office is dealing with the matters and making the report regarding whether it is completed in all respects or not, needs a serious note and I am constrained to observe that the reasons best known to the person concerned, the reports are made casually.

7. In this case, the prayer (A) of para no.21 is more specific and clear and the petitioner has prayed for quashing of the final seniority list, but the office has not reported that this document is not on record.

8. In the result, this Special Civil Application fails and the same is dismissed only on the ground that the impugned order has not been filed on the record of this case and this writ petition in the absence of the same cannot be entertained by this court. Rule discharged. Interim relief, if any, granted by this court stands vacated. The petitioner is directed to pay Rs.1000/- by way of costs of this petition to respondents no.2, 4 and 5.

zgs/-